

EXHIBIT A

**BellSouth Interconnection Services**

675 W. Peachtree Street, NE
Room 34S91
Atlanta, Georgia 30375

John M. Hamman
404-927-1992
FAX: (404) 529-7838

February 3, 2004

Via US Mail and Email

Peter Blisard
Level 3 Communications, LLC
1025 Eldorado Blvd.
Broomfield, CO 80021

Re: Request that Level 3 Communications, LLC ("Level 3") engage in negotiations with BellSouth Telecommunications, Inc. (BellSouth) pursuant to Section 251(c)(1) of the Telecommunications Act of 1996

Dear Peter:

With this letter, the parties have agreed to restart the clock for renegotiation of the Interconnection Agreement between Level 3 and BellSouth, which expired on December 31, 2003 in the states of Georgia, South Carolina, and Mississippi. For purposes of calculating the negotiations window for these states September 6, 2003 shall be used as the commencement date for renegotiations. This date shall begin the 135-day window for negotiations before entering into the arbitration window.

With this revision to the December 3, 2003 letter, the Arbitration window for the states of Georgia, South Carolina, and Mississippi remains as January 19, 2004 to February 13, 2004.

I look forward to working with Level 3 in reaching a mutually agreeable Interconnection Agreement. Should you have questions regarding this letter, please do not hesitate to call me at 404-927-1992.

Sincerely,

John M. Hamman
Manager-Interconnection Services

Concurrence:

Level 3 Communications, LLC.

2/4/2004
Date

EXHIBIT B

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AGREEMENT GENERAL TERMS AND CONDITIONS

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., (BellSouth), a Georgia corporation, and Level 3 Communications, LLC ("Level 3"), a Delaware limited liability company, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or Level 3 or both as a "Party" or "Parties."

WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

WHEREAS, Level 3 is or seeks to become a CLEC authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, Level 3 wishes to resell BellSouth's telecommunications services and purchase network elements and other services, and, solely in connection therewith, may wish to utilize collocation space as set forth in Attachment 4 of this Agreement); and

WHEREAS, the Parties wish to interconnect their facilities and exchange traffic pursuant to Sections 251 and 252 of the Act.

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and Level 3 agree as follows:

Definitions

[GT-1: LEVEL 3 PROPOSES TO INSERT THE BOLDED LANGUAGE BELOW AND STRIKE THE ITALICIZED LANGUAGE]

(BellSouth Proposal): *In the event a modification occurs to the definitions set forth below in this Agreement during the term of this Agreement, the Parties will modify the Agreement as provided forth in Section 14.3 of the Agreement.*

(Level 3 Proposal): Those terms either defined or not defined herein shall be defined as in the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act") and as modified from time to time.

Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another

person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent

Commission is defined as the appropriate regulatory agency in each state of BellSouth's nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

Competitive Local Exchange Carrier (CLEC) means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

Effective Date is defined as the date that the Agreement is effective for purposes of rates, terms and conditions and shall be thirty (30) days after the date of the last signature executing the Agreement. Future amendments for rate changes will also be effective thirty (30) days after the date of the last signature executing the amendment.

End User means the ultimate user of the Telecommunications Service.

FCC means the Federal Communications Commission.

General Terms and Conditions means this document including all of the terms, provisions and conditions set forth herein.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications Service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used

Telecommunications Act of 1996 (Act) means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47 U.S.C. Section 1 et. seq.).

1. CLEC Certification

- 1.1 Prior to execution of this Agreement, Level 3 agrees to provide BellSouth in writing Level 3's CLEC certification for all states covered by this Agreement except Kentucky prior to BellSouth filing this Agreement with the appropriate Commission for approval. If at the time of the filing of this Agreement, Level 3 has previously provided such information for those states where the Parties have operated under a prior interconnection agreement, Level 3 will not have to provide such information again.

- 1.2 To the extent Level 3 is not certified as a CLEC in each state covered by this Agreement as of the execution hereof, Level 3 will notify BellSouth in writing and provide CLEC certification when it becomes certified to operate in any other state covered by this Agreement. Upon notification, BellSouth will file this Agreement with the appropriate Commission for approval.

2. Term of the Agreement

- 2.1 The term of this Agreement shall be three years, beginning on the Effective Date and shall apply to the BellSouth territory in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Notwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date.
- 2.2 The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of this Agreement, either Party may provide notice of intent to renegotiate, and the Parties shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement (Subsequent Agreement).
- 2.3 If, within one hundred and thirty-five (135) days of commencing the negotiation referred to in Section 2.2 above, the Parties are unable to negotiate new terms, conditions and prices for a Subsequent Agreement, either Party may petition the Commission to establish appropriate terms, conditions and prices for the Subsequent Agreement pursuant to 47 U.S.C. 252.
- 2.4 If, as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, and the Parties are not yet in arbitration, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is actively being negotiated in good faith or alternatively, a timely petition has been filed with the respective state public service commission and the Subsequent Agreement is subject to the respective state Commission arbitration pursuant to 252 of the Act. Upon conversion to a month-to-month term, during such negotiations, provided that the Parties are not in arbitration, then either Party, in its discretion, may terminate this Agreement upon sixty (60) days written notice to the other Party. Notwithstanding the foregoing, the Agreement cannot be terminated prior to 180 days after the original expiration date. In the event that BellSouth terminates this Agreement as provided herein, BellSouth shall continue to provide services to Level 3 pursuant to (1) the terms, conditions and rates set forth in BellSouth's standard interconnection agreement then in effect and made available to CLECs requesting negotiations pursuant to Section 251 of the Act, or (2) an agreement adopted by Level 3 pursuant to Section 13 of this Agreement. Neither Party shall refuse to provide services to the other Party during the negotiation of the Subsequent Agreement or the transition from this Agreement to the Subsequent Agreement.

- 2.5 In the event that BellSouth's standard interconnection agreement, or an agreement adopted by Level 3 under Section 13 becomes effective between the Parties, the Parties may continue to negotiate a Subsequent Agreement or arbitrate disputed issues to reach a Subsequent Agreement as set forth in Section 2.3 above, and the terms of such Subsequent Agreement shall be effective as of the effective date stated in such Subsequent Agreement and shall not be applied retroactively to the expiration date of this Agreement unless the Parties agree otherwise.

3. Operational Support Systems

Level 3 shall pay charges for Operational Support Systems (OSS) as set forth in this Agreement.

4. Parity

When Level 3 purchases Telecommunications Services from BellSouth pursuant to Attachment 1 of this Agreement for the purposes of resale to End Users, such services shall be equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides to its Affiliates, subsidiaries and End Users. To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element provided by BellSouth to Level 3 shall be at least equal in quality to that which BellSouth provides to itself, its Affiliates or any other Telecommunications carrier. The quality of the interconnection between the network of BellSouth and the network of Level 3 shall be at a level that is equal to that which BellSouth provides itself, a subsidiary, an Affiliate, or any other party. The interconnection facilities shall be designed to meet the same technical criteria and service standards that are used within BellSouth's network and shall extend to a consideration of service quality as perceived by BellSouth's End Users and service quality as perceived by Level 3.

5. White Pages Listings

- 5.1 BellSouth shall provide Level 3 and its customers access to white pages directory listings under the following terms:

5.1.1 Listings. Level 3 shall provide all new, changed and deleted listings on a timely basis and BellSouth or its agent will include Level 3 residential and business customer listings in the appropriate White Pages (residential and business) or alphabetical directories in the geographic areas covered by this Interconnection Agreement, in parity with BellSouth's own customer listings. As such, Directory listings will make no distinction between Level 3 and BellSouth subscribers.

5.1.2 Rates. So long as Level 3 provides subscriber listing information (SLI) to BellSouth in accordance with Section 5.2 below, BellSouth shall provide to Level 3 one (1) primary White Pages listing per Level 3 subscriber at no charge other than applicable service order charges as set forth in BellSouth's tariffs.

- 5.2 Procedures for Submitting Level 3 SLI are found in The BellSouth Business Rules for Local Ordering available on the BellSouth website at: www.interconnection.bellsouth.com.
- 5.2.1 Level 3 authorizes BellSouth to release all Level 3 SLI provided to BellSouth by Level 3 to qualifying Directory Publishers via either license agreement or BellSouth's Directory Publishers Database Service (DPDS), General Subscriber Services Tariff (GSST), Section A38.2, as the same may be amended from time to time. Such Level 3 SLI shall be intermingled with BellSouth's own customer listings and listings of any other CLEC that has authorized a similar release of SLI.
- 5.2.2 So long as Level 3 provides subscriber listing information (SLI) to BellSouth in accordance with Section 5.2 above, BellSouth will not charge Level 3 for the release of Level 3's SLI to Directory Publishers. Rather, BellSouth will recover the cost of providing Level 3's SLI to Directory Publishers from the requesting Directory Publisher.
- No compensation shall be paid to Level 3 for BellSouth's receipt of Level 3 SLI, or the subsequent release to Directory Publishers of such SLI. In addition, to the extent BellSouth incurs costs to modify its systems to enable the release of Level 3's SLI, or costs on an ongoing basis to administer the release of Level 3 SLI, Level 3 shall pay to BellSouth its proportionate share of the reasonable costs associated therewith. At any time that costs may be incurred to administer the release of Level 3's SLI, Level 3 will be notified. If Level 3 does not wish to pay its proportionate share of these reasonable costs, Level 3 may instruct BellSouth that it does not wish to release its SLI to independent publishers, and Level 3 shall amend this Agreement accordingly. Level 3 will be liable for all costs incurred until the effective date of the amendment
- 5.2.3 Neither BellSouth nor any agent shall be liable for the content or accuracy of any SLI provided by Level 3 under this Agreement, except where the inaccuracy is due to the willful misconduct or gross negligence of BellSouth or its agent arising after the SLI was provided by Level 3. Except as otherwise provided, BellSouth will forward to Level 3 any complaints received by BellSouth relating to the accuracy or quality of Level 3 listings.
- 5.2.4 Listings and subsequent updates will be released consistent with BellSouth system changes and/or update scheduling requirements.
- 5.3 Unlisted/Non-Published Subscribers. Level 3 will be required to provide to BellSouth the names, addresses and telephone numbers of all Level 3 customers who wish to be omitted from directories. Unlisted/Non-Published SLI will be subject to the rates as set forth in BellSouth's GSST.

- 5.4 Inclusion of Level 3 End Users in Directory Assistance Database. BellSouth will include and maintain Level 3 subscriber listings in BellSouth's Directory Assistance databases at no recurring charge and Level 3 shall provide such Directory Assistance listings to BellSouth at no recurring charge.
- 5.5 Listing Information Confidentiality. BellSouth will afford Level 3's directory listing information the same level of confidentiality that BellSouth affords its own directory listing information, and BellSouth shall limit Level 3's customer proprietary confidential directory information to the appropriate BellSouth employees.
- 5.6 Additional and Designer Listings. Additional and designer listings will be offered by BellSouth at tariffed rates as set forth in the General Subscriber Services Tariff.
- 5.7 Directories. BellSouth or its agent shall deliver White Pages directories to Level 3 subscribers at no charge and in the same manner, time and quantity as it provides its own customers.
6. **Court Ordered Requests for Call Detail Records and Other Subscriber Information**
- 6.1 Subpoenas Directed to BellSouth. Where BellSouth provides resold services or local switching for Level 3, BellSouth shall respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted telephone numbers belong to Level 3 End Users. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request. BellSouth shall maintain such information for Level 3 End Users for the same length of time it maintains such information for its own End Users.
- 6.2 Subpoenas Directed to Level 3. Where BellSouth is providing to Level 3 Telecommunications Services for resale or providing to Level 3 the local switching function, then Level 3 agrees that in those cases where Level 3 receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to Level 3 End Users, and where Level 3 does not have the requested information, Level 3 will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth for handling in accordance with 6.1 above.
- 6.3 In all other instances, where either Party receives a request for information involving the other Party's End User, the Party receiving the request will advise the law enforcement agency initiating the request to redirect such request to the other Party.
7. **Liability and Indemnification**

[ISSUE TWELVE: THE PARTIES HAVE BEEN UNABLE TO AGREE UPON LANGUAGE FOR THIS SECTION. LEVEL 3 PROPOSES TO INSERT THE BOLDDED LANGUAGE AND STRIKE THE ITALICIZED LANGUAGE]

- 7.1 (BellSouth Proposal): *Level 3 Liability. In the event that Level 3 consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, all such entities shall be jointly and severally liable for the obligations of Level 3 under this Agreement.*

(Level 3 Proposal): In the event that either Party consists of two (2) or more separate entities which have or assume rights or obligations as set forth in this Agreement and/or any Amendments hereto, all such entities shall be jointly and severally liable for the obligations under this Agreement.

- 7.2 Liability for Acts or Omissions of Third Parties. Neither BellSouth nor Level 3 shall be liable for any act or omission of another telecommunications company providing services to either Party.

- 7.3 Limitation of Liability

- 7.3.1 Except for any indemnification obligations of the Parties hereunder, or except in the case of gross negligence or willful misconduct, each Party's liability to the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall be limited to a credit for the actual cost of the services or functions not performed or improperly performed.

- 7.3.2 Limitations in Tariffs and Contracts. A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the End User or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss. Any such tariff term or condition shall not contradict or modify the obligations of the Parties to each other under this Agreement. In the event a term of the tariff conflicts with a term in this Agreement, this Agreement shall control.

- 7.3.3 Neither BellSouth nor Level 3 shall be liable for damages to the other Party's terminal location, equipment or End User premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's negligence or willful misconduct or by a Party's failure to ground properly a local loop after disconnection.
- 7.3.4 Except in the case of willful misconduct or gross negligence, under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.
- 7.3.5 To the extent any specific provision of this Agreement purports to impose liability, or limitation of liability, on either Party different from or in conflict with the liability or limitation of liability set forth in this Section, then with respect to any facts or circumstances covered by such specific provisions, the liability or limitation of liability contained in such specific provision shall apply.
- 7.4 Indemnification for Certain Claims. The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, or (2) any claim, loss or damage claimed by the End User of the Party receiving services arising from such company's use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement.
- 7.5 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

8. Intellectual Property Rights and Indemnification

- 8.1 No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications services, of any name, service mark, logo or trademark (collectively, the “Marks”) of the Other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the Other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the Other Party.
- 8.2 Ownership of Intellectual Property. Any intellectual property that originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited, non-assignable, non-exclusive, non-transferable license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right, now or hereafter owned, controlled or licensable by a Party, is granted to the other Party. Neither shall it be implied nor arise by estoppel. Any trademark, copyright or other proprietary notices appearing in association with the use of any facilities or equipment (including software) shall remain on the documentation, material, product, service, equipment or software. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.
- 8.3 Intellectual Property Remedies
- 8.3.1 Indemnification. The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service in the manner contemplated under this Agreement and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 7 preceding.
- 8.3.2 Claim of Infringement. In the event that use of any facilities or equipment (including software), becomes, or in the reasonable judgment of the Party who owns the affected network is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party shall promptly and at its sole expense and sole option, but subject to the limitations of liability set forth below:

- 8.3.2.1 modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or
- 8.3.2.2 obtain a license sufficient to allow such use to continue.
- 8.3.2.3 In the event Section 8.3.2.1 or 8.3.2.2 are commercially unreasonable after the exercise of best efforts over a reasonable period of time, then said Party may terminate, upon reasonable notice, the use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.
- 8.3.3 Exception to Obligations. Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.
- 8.3.4 Exclusive Remedy. The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.
- 8.4 Dispute Resolution. Any claim arising under this Section 8 shall be excluded from the dispute resolution procedures set forth in Section 10 and shall be brought in a court of competent jurisdiction.

9. Proprietary and Confidential Information

- 9.1 Proprietary and Confidential Information. It may be necessary for BellSouth and Level 3, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend.

- 9.2 Use and Protection of Information. Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient may also provide Information to its attorneys and consultants, provided that the individual attorneys or consultants agree to be bound by the confidentiality provisions of this Agreement as agents of the Recipient under this Agreement. Recipient will not make any copies of the Information inspected by it. BellSouth and Level 3 will use the same standard of care to protect Information received as they would use to protect their own confidential and proprietary Information.
- 9.3 Exceptions. Recipient will not have an obligation to protect any portion of the Information which:
- 9.3.1 (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser who has the legal authority to possess and disclose the Information; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.
- 9.4 Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. 251 or in performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith; Recipient will give notice as required by the state or federal rules or by regulatory agency rules/requirements, or if there is no requirement, in a commercially reasonable time.
- 9.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.
- 9.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.
- 9.7 Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 9 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and

obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

10. Resolution of Disputes

- 10.1 Each Party agrees to notify the other Party in writing of a dispute concerning this Agreement. Except as otherwise stated in this Agreement, including, but not limited to, billing disputes resolution as defined and required in Section 2 of Attachment 7, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, and the parties do not resolve it in the normal course of their dealings, then the dispute shall be resolved in accordance with this section. **[ISSUE ELEVEN: LEVEL 3 PROPOSES TO INSERT THE BOLDED LANGUAGE BELOW AND STRIKE THE ITALICIZED LANGUAGE]** (BellSouth Proposal) *Either Party shall petition the Commission for resolution of the dispute. Each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.*

10.1.1 (Level 3 Proposal) If the Parties are unable to resolve the issues relating to the dispute in the normal course of business within 60 days after delivery of notice of the dispute, each of the parties shall appoint a designated representative who has authority to settle the dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute.

10.1.2 If the Parties are unable to resolve issues related to the dispute within thirty (30) days after the Parties' appointment of designated representatives pursuant to Section 12.3, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity.

- 10.2 Procedures for resolution of billing disputes are as set forth in Section 2 of Attachment 7 of this Agreement.
- 10.3 Nothing in this Section shall be construed to preclude or limit either Party from waiving their rights to Sections 10.1 and 10.2 and may seek immediate relief from the State Commission.
- 10.4 Notwithstanding Section 10.3, either Party may seek injunctive relief from the appropriate state commission, court or other agency of competent jurisdiction to the extent it deems necessary.

- 10.5 **[ISSUE ELEVEN: LEVEL 3 PROPOSES TO INSERT THE BOLDED LANGUAGE] Either Party may seek relief from any appropriate judicial or administrative forum including, but not limited to, the Commission, the FCC or federal district court.**
11. **Taxes**
- 11.1 Definition. For purposes of this Section, the terms “taxes” and “fees” shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefore, excluding any taxes levied on income or real or personal property.
- 11.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party.
- 11.2.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.
- 11.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.
- 11.3 Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party.
- 11.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.
- 11.3.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Each Party will use its best efforts to ensure that any such taxes or fees are billed or presented in a timely manner. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 11.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under

applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.

11.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

11.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.

11.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

11.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

11.4 Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party.

11.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.

11.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Each Party will use its best efforts to ensure that any such taxes or fees are billed or presented in a timely manner. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.

- 11.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. If, after consultation in accordance with the preceding sentence, the purchasing Party does not agree with the providing Party's final determination as to the application or basis of a particular tax or fee, and if the providing Party, after receipt of a written request by the purchasing Party to contest the imposition of such tax or fee with the imposing authority, fails or refuses to pursue such contest or to allow such contest by the purchasing Party, the purchasing Party may utilize the dispute resolution process outlined in this Agreement. Utilization of the dispute resolution process shall not relieve the purchasing Party from liability for any tax or fee billed by the providing Party pursuant to this subsection during the pendency of such dispute resolution proceeding. In the event that the purchasing Party prevails in such dispute resolution proceeding, it shall be entitled to a refund in accordance with the final decision therein. Notwithstanding the foregoing, if at any time prior to a final decision in such dispute resolution proceeding the providing Party initiates a contest with the imposing authority with respect to any of the issues involved in such dispute resolution proceeding, the dispute resolution proceeding shall be dismissed as to such common issues and the final decision rendered in the contest with the imposing authority shall control as to such issues
- 11.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 11.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 11.4.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorneys' fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 11.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.
- 11.5 Mutual Cooperation. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional

information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest to the extent such assistance is expressly sought by the first Party.

12. Force Majeure

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, , or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease. Each Party agrees to act in a nondiscriminatory manner with regard to a Force Majeure event.

13. Adoption of Agreements

BellSouth shall make available, pursuant to 47 USC § 252 and the FCC rules and regulations regarding such availability, to Level 3 any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252, provided a minimum of six months remains on the term of such agreement. The Parties shall adopt all rates, terms and conditions concerning such other interconnection, service or network element and any other rates, terms and conditions that are legitimately related to or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement. The term of the adopted agreement or provisions shall expire on the same date as set forth in the agreement that was adopted.

14. Modification of Agreement

- 14.1** If either Party changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of that Party to notify the other Party in writing of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

- 14.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.
- 14.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Level 3 or BellSouth to perform any material terms of this Agreement, Level 3 or BellSouth may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.

15. **Non-waiver of Legal Rights**

Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

[ISSUE THIRTEEN: THE PARTIES HAVE BEEN UNABLE TO AGREE ON THE LANGUAGE FOR THIS SECTION. LEVEL 3 PROPOSES TO INSERT THE BOLDED LANGUAGE AND STRIKE THE ITALICIZED LANGUAGE]

16. **Indivisibility (BellSouth Proposal)**

Subject to Section 13 (Adoption of Agreements) and Section 14 (Modification of Agreement) of this Agreement, The Parties intend that this Agreement be indivisible and nonseverable, and each of the Parties acknowledges that it has assented to all of the covenants and promises in this Agreement as a single whole and that all of such covenants and promises, taken as a whole, constitute the essence of the contract. Without limiting the generality of the foregoing, each of the Parties acknowledges that any provision by BellSouth of collocation space under this Agreement is solely for the purpose of facilitating the provision of other services under this Agreement and that neither Party would have contracted with respect to the provisioning of collocation space under this Agreement if the covenants and promises of the other Party with respect to the other services provided under this Agreement had not been made. The Parties further acknowledge that this Agreement is intended to constitute a single transaction, that the obligations of the Parties under this Agreement are interdependent, and that payment obligations under this Agreement are intended to be recouped against other payment obligations under this Agreement.

Survival & Severability (Level 3 Proposal).

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. If any part of this Agreement is held to be invalid for any reason, such invalidity shall affect only the portion of the Agreement which has been held invalid. In all other respects this Agreement shall stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect.

17. Waivers

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

18. Governing Law

Where applicable, this Agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC and appropriate Commission. In all other respects, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia without regard to its conflict of laws principles.

19. Assignments

Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. A Party may assign this Agreement in its entirety to an Affiliate of the Party without the consent of the other Party; provided, however, that the assigning Party shall notify the other Party in writing of such assignment thirty (30) days prior to the Effective Date thereof and, provided further, if the assignee is an assignee of Level 3, the assignee must provide evidence of Commission CLEC certification. The Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations. Notwithstanding anything to the contrary in this Section, Level 3 shall not assign this Agreement to any Affiliate or non-affiliated entity unless either (1) Level 3 pays all undisputed bills and assigns all rights to disputed bills to assignee, past due and current, under

this Agreement, or (2) Level 3's assignee expressly assumes liability for payment of all bills.

20. Notices

20.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by overnight courier or by US mail postage prepaid, address to:

BellSouth Telecommunications, Inc.

BellSouth Local Contract Manager
600 North 19th Street, 8th floor
Birmingham, AL 35203

and

ICS Attorney
Suite 4300
675 West Peachtree Street
Atlanta, GA 30375

Level 3 Communications, LLC

Director of Interconnection Services
Level 3 Communications, LLC
1025 Eldorado Blvd.
Broomfield, CO 80021

and

Vice President – Public Policy and Government Affairs
Level 3 Communications, LLC
1025 Eldorado Blvd.
Broomfield, CO 80021

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

20.2 Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

20.3 Notwithstanding the foregoing, BellSouth may provide Level 3 notice via Internet posting of price changes and changes to the terms and conditions of services available for resale per Commission Orders. BellSouth will post changes to business processes and policies, notices of new service offerings, and changes to service offerings not requiring an amendment to this Agreement, notices required to be posted to BellSouth's website, and any other information of general applicability to CLECs.

21. Rule of Construction

No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

22. Headings of No Force or Effect

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

23. Multiple Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

24. Filing of Agreement

Upon execution of this Agreement it shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act, and the Parties shall share equally any filing fees therefor. If the regulatory agency imposes any filing or public interest notice fees regarding the filing or approval of the Agreement, Level 3 shall be responsible for publishing the required notice and the publication and/or notice costs shall be borne by Level 3. Notwithstanding the foregoing, this Agreement shall not be submitted for approval by the appropriate state regulatory agency unless and until such time as Level 3 is duly certified as a local exchange carrier in such state, except as otherwise required by a Commission.

25. Compliance with Applicable Law

Each Party shall comply at its own expense with Applicable Law.

26. Necessary Approvals

Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall

reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

27. Good Faith Performance

Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

28. Nonexclusive Dealings

This Agreement does not prevent either Party from providing or purchasing services to or from any other person nor, except as provided in Section 252(i) of the Act, does it obligate either Party to provide or purchase any services (except insofar as the Parties are obligated to provide access to Interconnection, services and Network Elements to Level 3 as a requesting carrier under the Act).

29. Rate True-Up

29.1 This section applies to Network Interconnection and/or Unbundled Network Elements and Other Services rates that are expressly subject to true-up under this Agreement.

29.2 The designated true-up rates shall be trued-up, either up or down, based on final prices determined either by further agreement between the Parties, or by a final order (including any appeals) of the Commission. The Parties shall implement the true-up by comparing the actual volumes and demand for each item, together with the designated true-up rates for each item, with the final prices determined for each item. Each Party shall keep its own records upon which the true-up can be based, and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such true-up, the Parties shall submit the matter to the Dispute Resolution process in accordance with the provisions of this Agreement.

30. Survival

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

31. Entire Agreement

31.1 This Agreement means the General Terms and Conditions, the Attachments identified in Section 31.2 below, and all documents identified therein, as such

may be amended from time to time and which are incorporated herein by reference, all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained in this Agreement and merges all prior discussions between them. Except as may be otherwise specified in this Agreement, this Agreement applies prospectively from the Effective Date hereof to (a) all orders for Services placed under any prior interconnection agreement between the Parties which are not completed as of the Effective Date hereof and (b) all Services being provided by either Party as of the Effective Date hereof under any prior interconnection agreement between the Parties; provided, however, that all non-recurring charges for orders for Services placed under any prior interconnection agreement between the Parties that are completed prior to the Effective Date hereof and all charges for Services provided by either Party prior to the Effective Date hereof shall be in accordance with such prior interconnection agreement; provided, further, that a failure of the other Party to pay any amounts due under such prior interconnection agreement shall be deemed a failure to pay an amount due under this Agreement and any dispute shall be resolved in accordance with the Dispute Resolution process set forth in this Agreement. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

31.2 This Agreement includes Attachments with provisions for the following:

Resale
Network Elements and Other Services
Network Interconnection
Collocation
Access to Numbers and Number Portability
Pre-Ordering, Ordering, Provisioning, Maintenance and Repair
Billing
Rights-of-Way, Conduits and Pole Attachments
Performance Measurements
BellSouth Disaster Recovery Plan
Bona Fide Request/New Business Request Process

31.3 The following services are included as options for purchase by Level 3 pursuant to the terms and conditions set forth in this Agreement. Level 3 may elect to purchase said services by written request to its Local Contract Manager if applicable:

Optional Daily Usage File (ODUF)

Enhanced Optional Daily Usage File (EODUF)
Access Daily Usage File (ADUF)
Line Information Database (LIDB) Storage
Centralized Message Distribution Service (CMDS)
Calling Name (CNAM)
LNP Data Base Query Service

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

BellSouth Telecommunications, Inc.

<<customer_name>>

By: _____

By: _____

Name: Kristen E. Rowe

Name: _____

Title: Director

Title: _____

Date: _____

Date: _____